No. 328

In the Supreme Court of the United States

OCTOBER TERM, 1957

ELEANOR D. GOODMAN, ADMINISTRATRIX OF THE ESTATE OF JACQUES BLUM, DECEASED, PETITIONER

v.

STANLEY GRANGER, COLLECTOR OF INTERNAL REVENUE FOR THE 23RD COLLECTION DISTRICT OF PENNSYLVANIA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (R. 19a–27a;[1] Pet. 26–34) is unreported. The opinion of the Court of Appeals (Pet. 15–25) is reported at 243 F. 2d 264.

JURISDICTION

The judgment of the Court of Appeals was entered on April 12, 1957. (Pet. 25–26.) A petition for rehearing was denied on May 2, 1957. (Pet. 2.) The petition for a writ of certiorari was filed on July 31,

[1] Record references are to the Appendix to the appellant's brief in the Court of Appeals.

1957. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED

Whether under Section 811 (a) of the 1939 Code, relating to the federal estate tax, a contractual right to deferred compensation payments (fifteen equal annual payments) passing from the decedent-employee to his estate, and collected by his estate, should be valued as of the time of the decedent's death (as held by the Court of Appeals) or at the moment before death (as held by the District Court and contended by the taxpayer).

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Internal Revenue Code of 1939 (Sections 810 and 811) and Treasury Regulations 105 (Section 81.10) are set forth in the Appendix, *infra*, pp. 8–11.

STATEMENT

The material facts, as they appear from the pleadings (R. 4a–18a) and the opinions of the District Court (R. 19a–21a; Pet. 26–28) and the Court of Appeals (Pet. 16–18), may be summarized as follows:

The decedent, Jacques Blum, died suddenly on May 2, 1947, at the age of 52. He was, at the time of his death, and had been for several years prior thereto, executive vice-president of Gimbel Brothers, Inc., in charge of its department store at Pittsburgh. (R. 19a; Pet. 16, 26.)

On October 19, 1944, June 1, 1945, and May 26, 1946, decedent entered into identical contracts of employment with Gimbel Brothers covering the years ending

January 31, 1945, January 31, 1946 and January 31, 1947, respectively. Each contract provided for a basic salary of $50,000 per year and for additional "contingent benefits" of $2,000 per year for fifteen years "after the employee ceases to be employed by the employer" by reason of death or otherwise. The post-employment "contingent payments" were to be made only if the employee duly performed the services agreed upon and did not engage in a competing business within a specified period after termination of his employment; and they were to be reduced if his post-employment earnings from a non-competing business, plus the contingent payments, exceeded seventy-five percent of his yearly average compensation under the contracts. Any of the fifteen annual contingent payments which fell due after the employee's death were to be paid to his estate or to a nominee designated in his will. (R. 9a–14a, 19a–20a; Pet. 16–17, 26–27, 35–39.)

After the decedent's death, Gimbels paid the $6,000 annual installments provided by the three separate contracts ($2,000 each) to the taxpayer, in her capacity of administratrix, as they became due. (R. 19a; Pet. 17, 27.)

Taxpayer filed a timely estate tax return, including the three contracts at a value of $15,000. Upon audit, the tax authorities increased the value of the three contracts to $66,710.34, said amount being the present worth of $90,000, payable in equal annual installments of $6,000 per year over a period of fifteen years. (R. 20a; Pet. 17–18, 27.)

The increase in the value of the contracts resulted in a deficiency in federal estate tax which taxpayer paid. Thereafter, taxpayer filed a claim for refund, and, after disallowance by the Commissioner, she brought this suit. (R. 8a, 16a, 20a; Pet. 18, 28.)

At the trial, taxpayer offered the testimony of three witnesses that the three contracts created no property right having any market value in the decedent while he lived. The Government offered the testimony of one witness (the examining agent), who testified that the deficiency assessment was based upon his conclusion that the contracts created in the decedent valuable vested interests, subject to being divested, and on that theory the contracts were considered to have the marketable monetary value attributed to them by the Government. (R. 20a–21a; Pet. 18, 28.)

The District Court, upholding the taxpayer, held that the decedent's interest in the contracts should be determined as at the moment before death and that it was then valueless. (R. 26a; Pet. 33–34.) The Court of Appeals, holding that the value of the decedent's interest should be determined as of the time of death, reversed the judgment of the District Court (Pet. 22–25.)

ARGUMENT

The Court of Appeals correctly pointed out (Pet. 20–23) that the decedent's interest in the employment contracts constituted "property" includable in his gross estate under Section 811 (a) of the 1939 Code (Appendix, *infra*), and that the tax is measured by the value of assets transferred by reason of death, the critical value being that which is determined as of the

time of death. See *Christiernin* v. *Manning*, 138 F. Supp. 923 (D. N. J.).[2]

In the instant case, the Court of Appeals was not unmindful of expressions in cases such as *Knowlton* v. *Moore*, 178 U. S. 41, 49; *Y. M. C. A.* v. *Davis*, 264 U. S. 47, 50; and *Edwards* v. *Slocum*, 264 U. S. 61, 63 (relied upon by taxpayer (Pet. 7–8)) to the effect that the tax reaches the interest of the decedent that ceased by reason of his death. But such expressions are not dispositive of the problem posed by the instant case, and they do not support the taxpayer's extreme contention (Pet. 2, 7–13) that the federal estate tax does not extend to property values that arise at the moment of death and pass to the objects of decedent's bounty.

Thus, in *Chase Nat. Bank* v. *United States*, 278 U. S. 327, this Court said (p. 337):

> Obviously, the word "transfer" in the statute, or the privilege which may constitutionally be taxed, cannot be taken in such a restricted sense as to refer only to the passing of particular items of property directly from the decedent to the transferee. It must, we think, at least include the transfer of property procured through expenditures by the decedent with the purpose, effected at his death, of having it pass to another.

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[2] The court there said (p. 925):

"There can not be a decedent, till death has occurred. A decedent's estate is not transferred either by his will or by intestacy, till death has occurred. * * * And the decedent's interest in the property taxable is to be such interest at the time of his death."

And in *U. S. Trust Co.* v. *Helvering*, 307 U. S. 57, 60, the Court characterized the federal estate tax as "an excise imposed upon the transfer of or shifting in relationships to property at death." See, also, *Helvering* v. *Hallock*, 309 U. S. 106, 111, where the Court said that "the measure of the tax is the value of the transferred property at the time when death brings it into enjoyment." And see *Fidelity Co.* v. *Rothensies*, 324 U. S. 108, 111; *Commissioner* v. *Estate of Field*, 324 U. S. 113, 116; *Tyler* v. *United States*, 281 U. S. 497, 503.

In the instant case, the decedent's death extinguished any possibility of forfeiture and operated to transfer the benefits of the contracts irrevocably to his estate. It would be strange indeed if the law were construed so as to exempt from tax the property values so passing. Here the decedent undoubtedly had the right to direct the course of the property after his death and that is "precisely what the federal estate tax hits." *Estate of Rogers* v. *Commissioner*, 320 U. S. 410, 413.[3]

Taxpayer states (Pet. 11) that she is paying income taxes on the $6,000 a year payments as received. But assuming that is so (see Section 126 of the 1939 Internal Revenue Code and Section 691, Internal Revenue Code of 1954, both relating to income in respect of

[3] In view of the decedent's power to select beneficiaries (R. 13a), it would seem that the property values in question could be included in decedent's gross estate not only under Section 811 (a) of the 1939 Code, *supra*, but also under Section 811 (f) of the Code, as amended by Section 403, Revenue Act of 1942, c. 619, 56 Stat. 798, 942, and Section 2 of the Powers of Appointment Act of 1951, c. 165, 65 Stat. 91.

decedents), it does not aid her here. Apparently, taxpayer would be entitled under Section 126 (c) of the 1939 Code and 691 (c) of the 1954 Code to a deduction, for income tax purposes, of the amount of estate tax attributable to inclusion of the contractual values in her husband's estate (see *Commissioner* v. *Linde*, 213 F. 2d 1, 5 (fn. 6) (C. A. 9th), certiorari denied, 348 U. S. 871).[4]

CONCLUSION

The decision of the Court of Appeals is clearly correct. There is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 1957.

[4] The contracts were valued in accordance with the Regulations (Treasury Regulations 105, Sec. 81.10 (Appendix, *infra*)), and taxpayer does not dispute the validity of the regulation. Taxpayer is only contending here that the decedent's interest should be valued as of the moment before death, when the contracts were contingent in character.

APPENDIX

Internal Revenue Code of 1939:

SEC. 810. RATE OF TAX.

A tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 812) shall be imposed upon the transfer of the net estate of every decedent, citizen or resident of the United States, dying after the date of the enactment of this title:

* * * * * * *

(26 U. S. C. 1952 ed., Sec. 810.)

SEC. 811. GROSS ESTATE.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States—

(a) *Decedent's Interest.*—To the extent of the interest therein of the decedent at the time of his death;

* * * * * * *

(26 U. S. C. 1952 ed., Sec. 811.)

Treasury Regulations 105, promulgated under the Internal Revenue Code of 1939:

SEC. 81.10 [as amended by T. D. 5906, 1952-1 Cum. Bull. 155]. *Valuation of property.*—(a) *General.*—The value of every item of property includible in the gross estate is the fair market value thereof at the time of the decedent's death; or, if the executor elects in accordance with the provisions of section 81.11, it is the fair market value thereof at the date therein

prescribed or such value adjusted as therein set forth. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. The fair market value of a particular kind of property includible in the gross estate is not to be determined by a forced sale price. Such value is to be determined by ascertaining as a basis the fair market value as of the applicable valuation date of each unit of the property. For example, in the case of shares of stock or bonds, such unit of property is a share or a bond. All relevant facts and elements of value as of the applicable valuation date should be considered in every case.

* * * * *

(i) *Annuities, life estates, remainders, and reversions; estates of decedents dying after December 31, 1951.*—(1) *In general.*—The value of an annuity contract, or an insurance policy on the life of a person other than the decedent, issued by a company regularly engaged in the selling of contracts of that character is established through the sale by that company of comparable contracts. See section 86.19 (i) of Regulations 108, relating to the gift tax. As to insurance on the life of the decedent, see section 81.28. Except with respect to the aforementioned annuity contracts and insurance policies, the values of annuities, life estates, remainders, and reversions are to be computed by the methods hereinafter prescribed in this paragraph. * * *

(2) *Annuities*—(i) *Payable annually at end of year.* If the annuity is payable annually at the end of each year during the life of an individual, the amount payable annually should be multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity, or if payable

for a definite number of years, the amount payable annually should be multiplied by the figure in column 2 of Table II opposite the number of years in column 1.

* * * * *

Example (2). The decedent was entitled to receive an annuity of $10,000 a year payable at the end of annual periods throughout a term certain. At the time he died, an annual payment had just been made and five more annual payments were still to be made. By reference to Table II, it is found that the figure in column 2 opposite 5 years is 4.5151. The present worth of the annuity is, therefore, $45,151 ($10,000 multiplied by 4.5151).

* * * * *

(j) *Annuities, life estates, remainders, and reversions; estates of decedents dying before January 1, 1952.*—In the case of decedents dying before January 1, 1952, the general principles and methods prescribed in paragraph (i) of this section (with one exception set forth in the next paragraph) are to be followed but the present worth of the interest to be valued is to be computed with the use of Table A or Table B (which appear at the end of this section) * * *.

* * * * *

TABLE B

For estates of decedents dying before January 1, 1952

Table showing the present worth at 4 percent of an annuity for a term-certain, and of a reversionary interest postponed for a term-certain.

1	2	3
Number of years	Present worth of an annuity of $1, payable at the end of each year, for a certain number of years	Present worth of $1, payable at the end of a certain number of years
*	* *	* *
15	11.11839	.555265
*	* *	* *